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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

BY



CV 01-01915 #00000064

Honorable Barbara Jacobs Rothstein

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

11 BIANCA FAUST, individually and as
12 guardian of GARY C FAUST, a
13 minor, and BIANA CELESTINE
14 MELE,

No. C01-1915R

Plaintiffs,

15 vs
16 BELLINGHAM, WASHINGTON LODGE
17 #493 LOYAL ORDER OF MOOSE, INC ,
18 JOHN DOES (1-10) (fictitious names of
19 unknown individuals and/or entities and ABC
CORPORATION (1-10) (fictitious names of
unknown individuals and/or entities),

**MOTION TO PERMIT THE
SUBMISSION OF REPORTS
BY FRED DELMARVA,
HELEN WOODARD, M.A.,
DR. JOAN GOLD,
DR. ELLEN SHAPIRO, DR. GARY
GOLDFOGEL, DR. FRED CUSHNER,
AND DR. MICHAEL GANNON**

**NOTE ON MOTION CALENDAR
FOR: MARCH 7, 2003**

21 Comes now the Plaintiffs, by and through their attorneys of record and request this Court
22 to permit the submission of the reports on behalf of Gary C Faust of (1) Fred Del Marva, (2)
23 Helen Woodard, (3) Dr Joan Gold, (4) Dr Ellen Shapiro, and (5) Dr. Gary Goldfogel,
24 submitted after the initial discovery deadline of January 6, 2003, but before the extended
25 discovery deadline of February 10, 2003, and whose names were timely given to defense
26 counsel

MOTION TO PERMIT SUBMISSION OF REPORTS BY
FRED DELMARVA HELEN WOODARD M A ,
DR. JOAN GOLD AND DR. ELLEN SHAPIRO (C01-1915R)

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1 Plaintiffs also seek permission to submit the reports of Dr Fred Cushner, treating doctor
 2 of Bianca Faust and Dr. Michael Gannon, treating doctor of Bianca Celestine Mele, who would
 3 be the only doctors to testify for these two plaintiffs, and to permit Dr Gary Goldfogel,
 4 pathologist to testify as to his opinion that he found during the autopsy of Hawyke Kinkaid
 5 fatty degeneration of the liver which is compatible with high levels of ethanol consumption.
 6 This indicates that Mr Kinkaid consumed large concentrations of alcohol on a regular basis, as
 7 well as immediately prior to his demise

9 **II ARGUMENT**

10 Plaintiffs seek permission for the submission for the reports of Mr Fred
 11 DelMarva, Helen Woodard, M A , Dr Joan Gold, Dr Ellen Shapiro, Dr Fred Cushner
 12 and Dr Michael Gannon Mr DelMarva is a dram shop expert, who is a certified TIPS
 13 trainer for the responsible service of alcohol Helen Woodard is an expert in life care
 14 planning, rehabilitation counseling and Dr Joan Gold and Dr Ellen Shapiro are
 15 treating physicians for Gary C Faust The depositions of Fred DelMarva and Helen
 16 Woodard have been requested and are being scheduled

17 Dr Michael Gannon is the treating physician for Bianca Celestine Mele He
 18 treated her at St Joseph's Hospital, Bellingham, Washington, and those records were
 19 submitted to defense counsel on or about January 25, 2003 Dr Fred Cushner, the
 20 treating physician for Bianca Faust, was named in plaintiffs' initial Disclosures

21 Since these will be done shortly, and since reports have been received by
 22 defense counsel, there will not be a delay in the trial

23 Plaintiff's also seek either to read to the jury or to permit Dr Gary Goldfogel the

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1 pathologist who performed the autopsy on Hawkeye Kinkaid, to testify that the findings
2 of his liver indicated that Mr. Kinkaid consumed large concentrations of alcohol on a
3 regular basis. This is important since it corroborates the testimony of another fact
4 witness who said that Mr. Kinkaid had been observed intoxicated at the Moose Lodge
5 on several occasions and disputes the testimony of Moose Lodge member who said he
6 drank very little.

7 It is respectfully submitted that these expert witnesses should be permitted to
8 testify. Wendt v. Hast International, Inc., 125, F.3d 806 (9th Cir.1997).

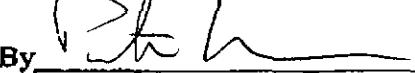
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10 **CONCLUSION**

11 For the foregoing reasons, plaintiff respectfully requests that the motion to
12 permit the submission of reports by Fred DelMarva and Helen Woodard, Dr. Joan Gold,
13 Dr. Ellen Shapiro, Dr. Fred Cusher and Dr. Michael Gannon be granted

14 It is also respectfully requested that plaintiffs be permitted to have Dr. Gary Goldfogel
15 testify at trial as to his findings during the autopsy concerning the liver and his opinion that Mr.
16 Kinkaid consumed large concentrations of alcohol on a regular basis

17
18 DATED. February 21, 2003

19
20 FREISE & WELCHMAN

21 By 
22 Peter Lawson
23 WSBA # 28886

24 Of Attorneys for Plaintiffs

25 PAUL J. HIRSH, P.C.

26 By 
Paul J. Hirsh
Attorneys for Plaintiffs